

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT : Robert Sackstein CONFIRMATION NO. : 1314
SERIAL NUMBER : 10/042,421 EXAMINER : Gambel, Phillip
FILING DATE : October 18, 2001 ART UNIT : 1644
FOR : HEMATOPOIETIC CELL E-SELECTION/L-SELECTIN LIGAND
GLYCOSYLATED CD44 POLYPEPTIDE

Via EFS

APPLICATION FOR ADJUSTMENT OF PATENT TERM UNDER 37 C.F.R. § 1.705(b)

Applicant requests reconsideration of the patent term adjustment under 37 C.F.R. § 1.705(b) to 0 days as of the mailing of the Notice of Allowance. In support of this request, Applicant submits the following statement of facts pursuant to 37 C.F.R. § 1.705(b).

(i) The United States Patent and Trademark Office (“Office”) calculated the adjustment under 35 U.S.C § 154(b)(1)(A) as 466 days (USPTO A Delay). However, the correct adjustment under 37 C.F.R. § 1.703 is 405 days, which is the sum of 336 days (delay under 37 C.F.R. § 1.703(a), “the 14-month rule”) and 69 days (delay under 37 C.F.R. § 1.703(a),(c)-(e)), for the period beginning May 28, 2010 and ending August 5, 2010. Applicant submits that the 61-day PTA for Office delay for the mailing of the Non-Final Office Action on August 20, 2009 is incorrect. The basis for this is the following:

On August 20, 2009, the Office mailed a Non-Final Office Action. This Action was mailed within the four months of the filing of Applicant’s Request for Continued Examination filed June 8, 2009.

(ii) The correct reduction of patent term under 35 U.S.C § 154(b)(2)(C), for Applicant’s failure to engage in reasonable efforts to conclude prosecution of the application, is 622 days. This number differs from that calculated by the Office by 108 days for the following reasons:

Applicant believes that the Office incorrectly attributed 108 days of delay to Applicant under 37 C.F.R. § 1.704. Specifically, on June 8, 2009 Applicant filed a Supplemental Information Disclosure Statement. The Supplemental Information Disclosure Statement was submitted at the same time as Applicant’s Request for Continued Examination also filed on June 8, 2009.

In summary, Applicant respectfully requests an adjustment of patent term to indicate a total PTA of 0 days, which is the sum of periods under 35 U.S.C § 154(b)(1)(A) (~~405~~ days), less the sum of the periods under 35 U.S.C § 154(b)(2)(C) (~~622~~ days), or a total of 0 days.

The above-identified application is not subject to a terminal disclaimer. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the application as set forth in 37 C.F.R. § 1.704, other than the circumstances described above.

Applicant reserves the right to request reconsideration of the patent term calculated under 35 U.S.C § 154(b)(1)(B). As of the present time, the delay due to the failure of the Office to issue a patent within three years after the date on which the application was filed is estimated to be **281** days, which is the period from October 19, 2004 (the day after the date that is the three year anniversary of the application filing date) up to and including November 24, 2005 (the day before the date that a Request for Continued Examination was first filed) and excluding the initial period of Appellate Review following Applicant's Notice of Appeal filed July 27, 2005 up to and including November 24, 2005 (the day before the date that a Request for Continued Examination was first filed).

Pursuant to 37 C.F.R. § 1.705(b) and § 1.18(e), the fee required for filing this application for patent term adjustment is believed to be **\$200.00**. Please charge the required fee, and any additional fees due, or credit any overpayment of same, to Deposit Account No. 50-0311, Customer No. 30623, Reference No.: 36459-501001US.

Respectfully submitted,

Date: November 5, 2010

/Muriel Liberto/

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